Supreme Court, U. S.
FILED
MAR 8 1980
MICHAEL RODAK, JR., CLERK

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1979

NO: 79-1387

GEORGE WILLIAM MINSON

PETITIONER

V.

CHRYSLER CORPORATION

RESPONDENT

PETITION FOR WRIT OF CERTIORARI

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SUPREME COURT OF THE UNITED STATES

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V.

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RESPONDENT

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To The Honorable Supreme Court of the United States:

The petition of George William Minson, for a writ of certiorari directed to the United States Circuit Court of Appeals for the Fourth Circuit to bring before the Supreme Court the case of George William Minson, Appellant-Plaintiff, v. Chrysler Corporation, Appellee-Defendant.

REFERENCE TO OPINIONS BELOW

The opinion below in the judgment of affirmance of the United States Court of Appeals for the Fourth Circuit, No. 79-1480, reversal of which judgment is sought by this petition for writ of certiorari, is an unpublished opinion, appended hereto as "Appendix A".

The Memorandum of the United States District Court for the Eastern District of Virginia, Richmond Division, No. 78-0905-R, in the order of dismissal of action which the above opinion and judgment affirmed, and reversal of which order is also sought by this petition, and which petitioner believes to be an unpublished opinion, is appended hereto as "Appendix B."

In the prior case, Minson Plymouth, Inc. v. Chrysler Motors Corporation, in the United States District Court for the Eastern District of Virginia, Richmond Division, No. 73-469-R, (relevant here for the purpose of Petitioner's contention that res judicata did not apply to the subsequent action referred to above), Petitioner believes the opinion in the judgment of dismissal upon the merits is an unpublished opinion. However, Petitioner is unable to append said opinion hereto because he does not now possess a copy of said opinion, and because he could not, in the exercise of due

diligence obtain a copy of same within the time allowed to file this petition.

The opinion of the United States Court of Appeals for the Fourth Circuit in its judgment of affirmance of that prior case, Minson Plymouth, Inc., Appellant v. Chrysler Motors Corporation, Appellee, No. 75-2312, is published at 544 Federal Reporter, 2d Series, pages 1266-1267, and is appended hereto as "Appendix C."

BASIS OF JURISDICTION

The affirming judgment sought to be reviewed was rendered on December 10, 1979 and entered on the same date at a time unknown to Petitioner; and Petitioner files his petition for writ of certiorari within three months.

The jurisdiction of this Court is invoked under Sec. 240 of the Judicial Code, as amended by Act of Congress February 13, 1925, Chapter 229, Stat. 938 (28 U.S.C.A. § 1254 (1).

It is believed that the lower court committed error in its decision on questions of substance involving matters of law.

The following cases sustain the jurisdiction of this Court to issue its writ of certiorari.

Brooklyn Savings Bank v. O'Neil, 324 U.S. 697, 65 S.Ct. 895, 89 L.Ed. 1296 (1945), rehearing denied, 325 U.S. 893, 65 S.Ct. 1189, 89 L.Ed. 2005.

Cafeteria and Restaurant Workers Union, Local 473, AFL-CIO v. McELROY, 367 U.S. 886, 81 S.Ct. 1743. 6 L.Ed.2d 1230, motion denied, 366 U.S. 956, 81 S.CT. 1912, 6 L.Ed.2d 1251, rehearing denied, 368 U.S. 869, 82 S.Ct. 22, 7 L.Ed.2d. (1961).

Carnley v. Cochran, 369 U.S. 506, 82 S.Ct. 884, 8 L.Ed.2d. 70 (1962).

Heflin v. United States, 358 U.S. 415, 79 S.Ct. 451, 3 L.Ed.2d. 407 (1959).

Pennsylvania R.Co. v. O'Rourke, 344 U.S. 334, 13 S.Ct. 302, 97 L.Ed. 367 (1953), rehearing denied, 345 U.S. 913, 73 S.Ct. 638, 97 L.Ed. 1347.

T.I.M.E., Inc. v. United States, 359 U.S. 464, 79 S.Ct. 904, 3 L.Ed.2d. 952 (1959).

United States Seaboard Air Line R. Co., 361 U.S. 78, 80 S.Ct. 12, 4 L.Ed.2d. 25 (1959).

(1) Is a prior decision of a District Court in an action between two parties res judicata on a cause of action and on facts, neither of which were tried therein, but rather excluded by a pre-trial order, in a subsequent action between the same parties, which subsequent action is based solely upon the previously excluded cause of action and facts?

(2) Is a pro se party, who seeks to oppose a motion for summary judgment, denied due process of law by the refusal of the District Court to hold a hearing on the motion, and by that Court's concurrent insistence that the motion be argued solely by briefs?

CONSTITUTIONAL PROVISION INVOLVED

> No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private

property be taken for public use, without just compensation.

Fifth Amendment to United States Constitution.

STATEMENT OF THE CASE

The instant petition arises from an action against respondent based on breach of contract and common law duties. Nevertheless, the courts below in this action granted summary judgment to the respondent on the grounds that this action had been previously litigated, and a final decision was reached in that litigation. However, that previous litigation, although it involved the same parties, was based on totally different grounds. Moreover, there was no possibility of raising any grounds other than those statutory grounds which were actually raised in the former action, since a pre-trial order limited the scope of that action.

Thus, in the former action in 1973, Petitioner commenced an action in the United States District Court for the Eastern District of Virginia, Richmond Division, against the Respondent, alleging violation of two statutes by the Respondent in dealings between the two as automobile franchisor and dealer. That action did not

concern non-statutory contract claim which dealt with certain automotive parts in Petitioner's possession. The parts were the subject of a subsequent action, from which subsequent action this petition culminates. Nor did that prior action concern any of Respondent's duties to Petitioner, except under the federal and state statutes therein referred to, as the scope of that action was limited by agreement of counsel and by pre-trial order therein. In that prior action, the trial court granted dismissal of the action on motion by Respondent at the close of Petitioner's case at trial. Petitioner thereupon appealed the dismissal; but the United States Court of Appeals for the Fourth Circuit affirmed the dismissal.

In 1978, Petitioner commenced the instant action in the Circuit Court of the City of Hopewell, Virginia, which action was promptly removed to the United States District Court for the Eastern District of Virginia, Richmond Division. Thereupon, Respondent moved for summary judgment on the theory of res judicata. Petitioner, a layman now representing himself, requested oral argument on whether summary judgment was proper; and the Court denied that request, instead demanding that Petitioner file a brief and affidavits on the issue. As a layman, Petitioner was not able to satisfactorily articulate to that Court why the

theory of res judicata did not apply to the subsequent action. Thereupon that Court granted summary judgment to Respondent on the theory of res judicata. Petitioner still representing himself appealed to the United States Court of Appeals for the Fourth Circuit. That Court affirmed the judgment of the lower court. The present Petition for Writ of Certiorari was timely filed following the judgment of affirmance of the United States Court of Appeals for the Fourth Circuit, seeking reversal of that judgment and of the judgment of the District Court below in this action.

The basis for federal jurisdiction of the United States District Court below in this action is founded upon 28 U.S.C.A. § 1441(a).

ARGUMENT FOR ALLOWANCE OF THE WRIT

A. Reasons For the Writ

(1) The Court of Appeals has decided an important question of federal law which has been settled by this Court contrary to the decision of the Court of Appeals.

(2) The Court of Appeals has decided a federal question in a way in conflict with applicable decisions of this Court.

(3) The Court of Appeals has decided a question of local law in a way in conflict with applicable local decisions.

(4) The Court of Appeals has decided an important question of federal law which has not yet been, but should now be, settled by this Court.

B. Amplification of the Above Reasons

(1) The writ sought should be granted, since the judgment of affirmance below was in conflict with decisions of this Court regarding the application of res judicata. Decisions of this Court clearly indicate that that theory does not apply to different causes of actions between the same parties not directed toward identical subject matter. Mercoid Corp. v. Mid-Continental Inv. Co., 320 U.S. 661, (1944). In the present action, Petitioner tried inarticulately as a layman to express causes of action in breach of contract and other common-law duties against Respondent concerning certain automotive parts; whereas the prior action was limited by court order to, and hence was tried solely upon, causes of action concerning purely statutory duties, totally apart from the specific duty to repurchase said automotive parts, which duty and which parts are the subject matter of the present action. Additional reason for the grant of the

writ sought, based upon this error of the Court of Appeals below, is the inconsistency of that Court's decision, sought to be reviewed, with applicable local decisions concerning the application of res judicata.

(2) The writ sought should be granted, since additionally the judgment of affirmance below decided a federal question in a way in conflict with applicable decisions of this Court concerning the United States Constitution, Fifth Amendment prohibition of denial of property without due process. While this Court has apparently not spoken to the precise issue of the important federal question of whether due process requires extending to a layman the right to be heard in person on the propriety of a grant of summary judgment against him; this Court should settle that question. In the present action, Petitioner was denied that right by the District Court, and as a result was not adequately able to articulate, in the frozen format of a brief, his very valid reasons why the former action did not bar the instant action. In the questioning of Petitioner by the Court that would only properly have taken place at such hearing, these reasons would have come to light and prevented summary judgment from being granted on the basis of res judicata. A layman, more than an

experienced counsel, requires such hearing in person in order to be adequately and meaningfully heard. Otherwise, he would be denied due process, in that his course of action would be dismissed (thereby stripping him of his property rights) without access to a meaningful day in court. Boddie v. Connecticut, 401 U.S. 371 (1970). The decision of the Circuit Court of Appeals is in conflict with the following cases:

Aspden v. Nixon, 45 U.S. 467, 4 How. 467, 11 L.Ed. 1059 (1846);

Boddie v. State of Connecticut, 401 U.S. 371, 91 S.Ct. 780, 28 L.Ed.2d. 113 (1970);

Brown v. Felsen, 99 S.Ct. 2205 (1979).

C.I.R. v. Sunnen, 333 U.S. 591, 68 S.Ct. 715, 92 L.Ed. 898 (1948).

Birge-Forbes Co. v. Heye, 251 U.S. 317, 40 S.Ct. 160, 64 L.Ed. 286 (1920);

Hovey v. Elliott, 167 U.S. 409, 418, 17 S.Ct. 841, 42 L.Ed. 215 (1897);

Hughes v. U.S., 71 U.S. 232, 4 Wall 232, 18 L.Ed. 303 (1866);

Larsen v. Northland Transportation Co., 292 U.S. 20, 54 S.Ct. 584, 78 L.Ed. 1096 (1939);

Lawlor v. National Screen Service Corp., 349 U.S. 322, 75 S.Ct. 865, 99 L.Ed. 1122 (1955);

McComb v. Frink, 149 U.S. 629, 13 S.Ct. 993, 37 L.Ed. 876 (1893);

Mercoid Corp. v. Mid-Continent Inv. Co., 320 U.S. 661, 64 S.Ct. 268, 88 L.Ed. 376, reh. denied, 321 U.S. 802, 64 S.Ct. 555, 88 L.Ed. 1089, motion denied, 323 U.S. 672, 65 S.Ct. 77, 89 L.Ed. 546 (1944);

NAACP v. Button, 371 U.S. 415, 9 L.Ed.2d. 405, 83 S.Ct. 328 (1963);

North Carolina R. Co. v. Story, 268 U.S. 288, 45 S.Ct. 531, 69 Ed. 959 (1925);

Radford v. Myers, 231 U.S. 725, 34 S.Ct. 249, 58 L.Ed. 454 (1914);

Sea-Land Services, Inc. v. Gaudet, 414 U.S. 573, 94 S.Ct. 806, 39 L.Ed.2d. 9, reh. denied, 415 U.S. 986, 94 S.Ct. 1582, 39 L.Ed.2d. 883 (1974);

Stark v. Starr, 94 U.S. 477, 24 L.Ed. 276 (1876);

Tait v. Western Md. Ry. Co., 289 U.S. 620, 53 S.Ct. 706, 77 L.Ed. 1405 (1933);

Troxell v. Delaware L&W.R. Co., 227 U.S. 434, 33 S.Ct. 274, 57 L.Ed. 586 (1913);

Yates v. U.S., 354 U.S. 298, 77 S.Ct. 1064, 1 L.Ed.2d. 1356 (1957);

U.S. Int'l Bldg. Co., 345 U.S. 502, 73 S.Ct. 807, 97 L.Ed. 1182, reh. denied, 345 U.S. 978, 73 S.Ct. 1120, 97 L.Ed. 1392 (1953);

Cohen v. Power, 183 Va. 258, 32 S.E.2d 64 (1946);

Kemp v. Miller, 166 Va. 661, 186 S.E. 99 (1937);

Nationwide Mutual Ins. Co. v. Jewel Tea Co., 202 Va. 527, 118 S.E.2d. 646 (1958).

PRAYER

Wherefore, your Petitioner respectfully prays that a writ of certiorari be issued under the seal of this Court directed to the United States Circuit Court of Appeals for the Fourth Circuit, commanding that Court to certify and send to this Court for its review and determination on a day certain therein named a full and complete transcript of the record and proceedings in the case of George William Minson, Appellant-Plaintiff, v. Chrysler Corporation, Appellee-Defendant, No. 79-1480, to the end that this cause may be reviewed and determined by this Court as provided for in the statutes of the United States, and that said decree and judgment of the United States Circuit Court of Appeals for the Fourth Circuit may be reversed by this Honorable Court and that of the District Court reversed, and that your Petitioner may have such other and further relief as to this Honorable Court may seem meet and just.

George William Minson

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UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

(UNPUBLISHED) APPENDIX A

No. 79-1480

George William Minson, Appellant,

v.

Chrysler Corporation, Appellee.

Appeal from the United States District Court for the Eastern District of Virginia, at Richmond. D. Dortch Warriner, District Judge.

Submitted November 1, 1979 Decided December 10, 1979

Before WINTER, MURNAGHAN and SPROUSE, Circuit Judges.

(George William Minson, Appellant, Pre Se; R. Kenneth Wheeler, Robert M. Rolfe, Stephen T. Gannon and Hunton and Williams on brief for Appellee.)

PER CURIAM:

The district court dismissed plaintiff's suit for money damages in which he alleged that he sued as the last director and trustee in dissolution of Minson Plymouth, Inc. and charged that defendant Chrysler Corporation had breached its contractual obligation to repurchase automotive parts possessed by Minson Plymouth. Dismissal was predicated upon the finding that Minson Plymouth had unsuccessfully asserted the same claim against defendant in prior litigation and that the valid judgment entered therein was res judicata of the present suit. Plaintiff has appealed and defendant has moved for summary affirmance together with an award of just damages and single or double costs to defendant.

From our examination of the briefs, the motion and response thereto and the record extract, we grant the motion for summary affirmance. We are satisfied that the district court was indisputably correct in dismissing the action for the reasons assigned by it. Minson v. Chrysler Corporation, Civil Action No. 78-0905-R (E.D.Va. March 13, 1979). We therefore affirm.

Our authority to award just damages and single or double costs to the appellee when we

determine that an appeal is frivolous is purely discretionary. See Rule 38, F.R.A.P. In the exercise of that discretion, we decline to make such an award in the instant case. Chrysler Corporation, as the prevailing party to this appeal, will, of course, be entitled to its costs as authorized by Rule 39, F.R.A.P.

A F F I R M E D.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION

GEORGE WILLIAM MINSON	:	
	:	
	:	
v.	:	CIVIL ACTION
	:	NO: 78-0905-R
	:	
CHRYSLER CORPORATION	:	

M E M O R A N D U M

It appearing to the Court without question that the former judgment in Minson Plymouth, Inc. v. Chrysler Motors Corp., Civil Action No. 73-468-R, is a valid judgment and is final; that the claim asserted in this litigation was asserted in the former litigation above mentioned; that the judgment rendered in the former litigation with respect to the claim asserted in the instant action was a judgment rendered on the merits; and that the parties to the former judgment stand in such a relationship to the present parties as to entitle the present parties to the benefits and subject them to the burdens of the former adjudication.

It follows that this action must be dismissed on defendant's plea of res adjudicata.

An appropriate order shall issue.

(D. Dortch Warriner)
United States District
Judge

Date: (13 March 1979)

MINSON PLYMOUTH, INC., a Virginia
Corporation, Appellant,

v.

CHRYSLER MOTORS CORPORATION,
a Delaware Corporation, Appellee.

No. 75-2312.

United States Court of Appeals,
Fourth Circuit.

Argued March 14, 1977.
Decided March 31, 1977.

The United States District Court for the Eastern District of Virginia, at Richmond, J. Calvitt Clarke, Jr., J., directed verdict in favor of defendant automobile manufacturer, and plaintiff dealer appealled. The Court of Appeals held that since termination was initiated by automobile dealer, manufacturer's decision to discontinue city dealership selling only one make of automobile did not violate Automobile Dealers' Day in Court Act.

Affirmed.

1. Trade Regulation - 871

In absence of coercion, intimidation or threats thereof, there can be no recovery under Automobile Dealers' Day in Court Act. Automobile Dealer's Day in Court Act, §§ 1-5, 15 U.S.C.A. §§ 1221-1225.

2. Trade Regulation - 871

Since termination of automobile dealership was initiated by dealer, which had attempted to effect a "concurrent ermination" of dealership by selling it as going business to buyer who would be approved by manufacturer, manufacturer's decision to discontinue city dealership selling only one make of automobile did not violate Automobile Dealers' Day in Court Act nor Virginia statute, which was conceded to be no broader than the federal Act. Automobile Dealers' Day in Court Act §§ 1-5, 15 U.S.C.A. §§ 1221-1225; Code V. 1950, § 13.1-564.

James F. Pascal, Richmond, Va. (Hirschler, Fleischer, Weinberg, Cox & Allen, Richmond, Va., on brief), for appellant.

R. Kenneth Wheeler, Richmond, Va. (Douglas W. Davis, Hunton & Williams, Richmond, Va., on brief), for appellee.

Before RUSSELL, Circuit Judge, FIELD, Senior Circuit Judge, and HALL, Circuit Judge.

PER CURIAM:

In February of 1971 the plaintiff Minson Plymouth, Inc., commenced business as a Plymouth automobile dealer in Hopewell, Virginia, under a Direct Dealer Agreement with the defendant Chrysler Motors Corporation. The dealership progressed reasonably well until February of 1973 when George Minson, the President and Manager of the plaintiff corporation, was advised by a physician that he had a serious heart condition and should get out of the automobile business. Thereafter, Minson attempted to effect a "concurrent termination" of the dealership by selling it as a going business to a buyer who would be approved by Chrysler. Minson sought to negotiate such a sale, but in June of 1973 was advised by Chrysler that it no longer desired to continue a dealership in Hopewell selling only Plymouth products. Contending that Chrysler's conduct violated the Automobile Dealers' Day in Court Act, 15 U.S.C. §§ 1221-1225 as well as Virginia Code § 13-1-564, Minson instituted this action. At the conclusion of the evidence the district court directed a verdict in favor of Chrysler and Minson has appealed.

/1,2/ It is now well settled that in the absence of coercion, intimidation or threats thereof, there can be no recovery under the

federal statute. Fray Chevrolet Sales, Inc. v. General Motors Corp., 536 F.2d 683 (6 Cir. 1976); Overseas Motors, Inc. v. Import Motors Ltd., 519 F.2d 119 (6 Cir. 1975). Since the termination was initiated by Minson, we agree with the district judge that Chrysler's decision to discontinue a "Plymouth only" dealership in Hopewell was not violative of the day-in-court Act. Counsel for the plaintiff concedes that the scope of the Virginia statuts is no broader than the federal Act and, accordingly, the judgment is affirmed.

AFFIRMED.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION

GEORGE WILLIAM MINSON	:	
	:	
	:	
V.	:	CIVIL ACTION
	:	NO: 78-0905-R
	:	
CHRYSLER CORPORATION	:	

O R D E R

The plaintiff may, if he so desires respond to defendant's motion for summary judgment with any matter he wishes to offer in rebuttal within 10 days of this date. Such material should be in the form of affidavits, that is, sworn or signed statements by persons having first-hand knowledge of the facts to which the statement refer. A statement signed under penalty of perjury need not be notarized to qualify as an affidavit. In addition to such material plantiff may file a legal brief supporting his view of the case. Should plaintiff fail to submit any such materials, the Court has the power to enter judgment against plaintiff on the basis of defendant's motion for summary judgment.

Let the Clerk send a copy of this order to plaintiff and counsel for defendant.

(D. Dortch Warriner)
United States District
Judge

Date: (22 February 1979)

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION

GEORGE WILLIAM MINSON	:	
	:	
V.	:	CIVIL ACTION
	:	NO: 78-0905-R
CHRYSLER CORPORATION	:	

O R D E R

For the reasons set forth in the memorandum this day entered defendant's motion for summary judgment is GRANTED and this action is DISMISSED. Judgment is entered for defendant against the plaintiff with costs.

Should plaintiff desire to appeal, written notice of appeal must be filed with the Clerk of this Court within 30 days of this date.

Let the Clerk send a copy of this order and the accompanying memorandum to the plaintiff and to counsel for defendant.

(D. Dortch Warriner)
United States District
Judge

Date: (13 March 1979)

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION

MINSON PLYMOUTH INC., :
a Virginia Corporation :
:
vs. : JUDGMENT
:
CHRYSLER MOTOR CORPORATION :
a Delaware Corporation :

This action came on for hearing before the Court, Honorable J. Calvitt Clarke, Jr., United States District Judge, presiding, and the issues having been duly heard and a decision having been duly rendered,

It is Ordered and Adjudged that the plaintiff Minson Plymouth, Inc., a Virginia corporation take nothing, and the action be dismissed on merits.

Dated at Richmond, Virginia this 11th day of September, 1975.

(W. Farley Powers, Jr.)
Clerk of Court

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA

RICHMOND DIVISION

IN THE CHAMBERS OF
JUDGE WARRINER

INITIAL PRE-TRIAL ORDER
Entered November 16, 1978

...15. All motions, other than those excepted in Local Rule 11(F), must be accompanied by a brief or memorandum in support thereof. Motions filed without a brief will not be considered and the issues raised therein may be deemed waived. Opposing counsel shall file his brief in opposition to the motion within ten (10) days of the filing of the motion. A rebuttal brief may be filed within three (3) days thereafter. In all other respects counsel shall be guided by the Federal Rules of Civil Procedure and Local Rule 11.

When all briefs have been filed or when the time within which briefs are required to be filed has expired, it is incumbent upon the moving party to confer with opposing counsel to determine if oral argument will be necessary.

In the event oral argument is deemed necessary, it is the further duty of the moving party to confer with opposing counsel with respect to a hearing date and to contact Judge Warriner's secretary to arrange for such a hearing. Upon the assignment of a hearing date, notice shall be filed with the Court and served upon opposing counsel. Motions as to which the Court's immediate attention is required should be called to the attention of the Clerk's Office at the time of the filing thereof.

Counsel are urged to prepare adequate briefs so the Court may properly determine the issue presented without oral argument. A request for oral argument should be made only when the matter cannot adequately be presented on briefs. Counsel may not be heard on oral argument if he has failed to file his brief in accordance with the procedures hereinabove set forth.

Counsel for all parties acknowledge receipt of a copy of this order.

_____
United States District Judge

Date: _____

CERTIFICATE OF SERVICE

This is to certify that I, GEORGE WILLIAM MINSON, mailed three copies of this Petition for Writ of Certiorari to the Law Firm of Chrysler Corp., Hunton & Williams, Post Office Box 1535, Richmond, Virginia 23212 on this 3th day of March, 1980.

George W. Minson

GEORGE W. MINSON
907 Forest View Drive
Colonial Heights,
Virginia 23834

Telphone: (804) 526-2939

Sworn before me this _____ day of _____, 1980.

_____
Notary Public